

**DECISION**



*19601*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-200917.2

DATE: September 29, 1981

MATTER OF: Work System Design, Inc.--Reconsideration

**DIGEST:**

1. Protester has provided new information in request for reconsideration which shows that protest was filed within 10 working days of receipt of information on which protest is based.
2. Protester who files Freedom of Information Act request within reasonable time of suspicion of grounds for protest and who files protest within 10 working days of receipt of information in response to request has diligently pursued its protest.
3. Where all technical evaluation factors reasonably relate to experience of person who will perform contract, high technical score given to proposal consisting of resume of person who will perform contract and brief statement of approach to be used is not unreasonable where resume shows relevant background.
4. Where technical proposals are essentially equal technically, award is properly based on low cost, even though cost was not listed as evaluation factor.
5. Where information to be listed on Department of Defense Form 633 (Contract Pricing Proposal) was contained in offeror's cost proposal, failure to list information on form does not affect validity of award.
6. Issues raised for first time in comments to agency report are untimely and will not be considered where they were or should have been known at same time as grounds which were initially protested.

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Work System Design, Inc. (WSD), requests reconsideration of our decision in Work System Design, Inc., B-200917, November 7, 1980, 80-2 CPD 349, which dismissed as untimely WSD's protest of the award of a contract for manufacturing technology investment opportunity studies to Manufacturing Technology, Inc. (MTI), by the Department of the Navy (Navy), under request for proposals (RFP) No. N60530-80-R-0228, issued by the Naval Weapons Center, China Lake, California. In that decision, based on dates contained in WSD's protest letter, we found that it had not protested within 10 working days of receipt of information from the Navy on which its protest was based. In its request for reconsideration WSD has shown that the date it had originally stated as the receipt date of the material was, in fact, the date that the material was mailed. Based on this new information, we find that WSD's protest was filed within 10 working days of its receipt of the material.

In its report on the protest, the Navy argues that WSD was not diligent in pursuing its protest, and that the protest should be dismissed. The Navy points out that WSD received notice on August 12, 1980, that the contract had been awarded to MTI, yet did not file a Freedom of Information Act (FOIA) request until September 8 and did not file a protest until October 17.

We find, however, that WSD did pursue its protest with reasonable diligence. On August 12, WSD knew only that MTI had been awarded the contract. On August 14 and 18, WSD made telephone calls to the Navy, seeking information concerning the basis for award. On September 8, WSD filed its FOIA request. WSD filed its protest within 10 days of receipt of the material requested under FOIA. While there was a short delay in filing the FOIA request, we do not think that the delay was sufficient to constitute a lack of due diligence. Cf. National Systems Management Corporation--Reconsideration, B-198811, November 19, 1980, 80-2 CPD 380 (5-week delay constitutes lack of due diligence).

WSD contends that MTI's proposal was so deficient that it should have been found technically unacceptable, that MTI's proposal did not contain certifications required by the RFP, and that the Department of Defense

Form 633 included in the proposal was improperly executed and did not contain the hours or rates used to determine MTI's cost.

The protest is denied.

In resolving cases in which a protester, as here, challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award. The determination of the relative merits of proposals is the responsibility of the procuring agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and exercise of such discretion will not be questioned unless shown to be arbitrary or in violation of the procurement statutes and regulations. Industrial Technological Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Thus, our Office will not substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180.

The evaluation factors and weights, stated in the RFP, are:

"SECTION M - EVALUATION FACTORS FOR AWARD

M-1. EVALUATION AND AWARD CRITERIA

The following criteria, arranged in descending order of importance, will be used in the evaluation of proposals:

1. Ability to prepare manufacturing technology investment opportunity studies.
2. Past experience in preparing manufacturing technology studies.
3. Technical education and/or experience of individual(s) who will perform service.
4. Understanding of methods used to compute economic analysis and return-on-investment (ROI).

5. Familiarity with methods used to determine cost drivers.

6. Degree of familiarity with NAVMAT Instruction 4800.36D.

"Evaluation factors 1, 2, and 3 are approximately equal in value and account for the greatest portion of the evaluation. Factors 4 and 5 are equal in value and combined account for less than half of the total weight assigned to factors 1, 2 and 3. Factor 6 has been assigned the lowest evaluation weight."

MTI's technical proposal was given a numerical score of 92 by one evaluator and 96 by the other, and WSD's technical proposal received scores of 84 and 91, out of a possible 100. MTI's cost was \$19,230; WSD's was \$64,732. The contracting officer determined that the proposals were essentially equal technically and awarded the contract to MTI, based on its lower cost.

MTI's technical proposal is very brief--one page of short descriptions of the contract objective and the approach to be used, and the resume of the individual who is to perform the contract. WSD's proposal, on the other hand, is far more elaborate in responding to each evaluation criterion. The issue is whether the Navy's finding that the two proposals were essentially equal technically was reasonable.

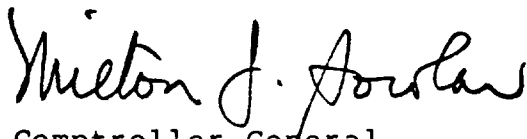
The statement of work in the RFP is only one page of brief description. The evaluation criteria are all factors which could be determined from the background of the individual who is to perform the work. The individual proposed by MTI has extensive experience, both in Government and industry, in manufacturing technology. The listed experience included recent experience as the Assistant Coordinator of a Navy manufacturing technology program. We cannot say that it was unreasonable for the Navy to determine, essentially from the resume of the person to perform the contract, that MTI's proposal was the technical equal of WSD's. See Multinational Agribusiness Systems Incorporated, B-201447, June 15, 1981, 81-1 CPD 482.

Even though cost was not listed as an evaluation factor, it is always a factor in the award of Government contracts. Where proposals are technically equal, it is proper to award to the low cost offeror. See e.g., Grey Advertising, Inc., 55 Comp. Gen. 1111, 1124 (1976), 76-1 CPD 325.

Regarding WSD's contention that MTI's proposal lacked certain required certifications, the Navy points out that the proposal includes the certification required by section K-10 of the RFP and we are not aware of any other required certifications.

Finally, in response to WSD's contention that MTI's DD Form 633 (Contract Pricing Proposal) was not properly executed, the Navy argues that all of the required information not on the form was provided in MTI's cost proposal. In fact, the information required is in MTI's cost proposal. The failure to transfer the information to DD Form 633 does not affect the validity of the award.

In its comments on the report, WSD raises, for the first time, issues concerning the hourly rate for the contract and the estimated level of effort required. However, these issues will not be considered since they were known or should have been known at the time that the other issues were known and, therefore, are untimely. See Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412.

  
Acting Comptroller General  
of the United States